MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016/2017

ULV4622 -LAW OF EVIDENCE II

(All Sections / Groups)

1 MARCH 2017

Reading Time : 2.30pm – 2.45pm (15 Minutes)
Answering Time : 2.45pm – 5.45pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer any **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall a CLEAN and ORIGINAL copy of the:

   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

"In R v Brooks (1991) 92 Cr App R 36 at 42 Mustill LJ, in a judgment which comprehensively deals with many of the problems relating to similar fact evidence, said this:

> *'The judge should be particularly cautious about admitting evidence of similar facts where there is a real possibility that the evidence relied upon to prove those facts has been concocted ... Whether it is the law that where collusion is seriously in issue the evidence must always be ruled out is at present debatable, although there is authority for this view in Boardman v DPP [1974] 3 All ER 887, [1975] AC 421. See also Cross on Evidence (6th edn 1985) p 333. Perhaps this goes too far, but the risks are so obvious that the judge should hesitate long before admitting the evidence and if he does, should give the jury the plainest possible warning.'*

In our judgment it should now be made clear that the question whether such evidence should be ruled out or not is one which goes to the legal admissibility of that evidence. The test for the trial judge to apply is: he must ask himself whether there is a real (as opposed to a merely speculative or fanciful) risk that the evidence is not independent. The risk can arise not only when there may have been deliberate concoction, but, as has been said, from media publicity or because one witness may have been innocently influenced by his or her knowledge of another's account."

Per: Laws J (as his Lordship then was) in ***R v ANANTHANARAYANAN*** **[1994] 2 ALL ER 847**

Critically evaluate the above statement with reference to decided cases and relevant statutory provisions.

(Total: 25 marks)

Continued...

QUESTION 2

"Evidence is admissible and should be received by the court unless there is legal reason for its exclusion. Evidence of relevant facts becomes inadmissible when its reception offends against public policy (or public interest) or a particular rule of law, an example of which is evidence of matters which are privileged against disclosure."

Per Ahmad Maarop FCJ in ***SURUHANJAYA SEKURITI v DATUK ISHAK ISMAIL*** **[2016] 3 CLJ 19**

Critically evaluate the above statement with reference to decided cases and relevant statutory provisions.

(Total: 25 marks)

QUESTION 3

Will, aged 45 has been charged with the murder of Melanie, a 14 year old girl who had befriended him on Facebook. Melanie's body was found in dumped in a monsoon drain in Kuala Lumpur on 22 November 2015. The Prosecution's case is that Will had been sexually grooming Melanie for over a month and had murdered her in carrying out his sexual motive. In order to establish the charge the Prosecution has tendered in evidence the Facebook messages exchanged between Will and Melanie as well as CCTV footage of Melanie meeting a man resembling Will at the Bangsar LRT station. In addition to the above evidence, during trial the Prosecution also adduced evidence of social media messages exchanged between Will and other under aged girls, which were sexually motivated and evidence of over 100 indecent images of children stored in Will's laptop. The defence objection to the admissibility of the CCTV footage was rejected by the trial court. The defence did not however raise any objection against the admissibility of the social media messages exchanged between Will and other under aged girls as well as the evidence of indecent images in his laptop.

During his examination in chief Will claims that he has never met Melanie in person and that they were only online friends. He stated that he was a decent family man with two daughters of his own and will never harm a young girl. Will also claims that he is not the man in the CCTV footage and raises mistaken identity as a defence.

The trial judge allowed the prosecution to cross examine Will on the pornographic materials which was found in his laptop and on his previous acquittal for sexual assault on a minor in 2005 where he had also raised mistaken identity as a defence.

Advise Will who was convicted of the charge and now wishes to appeal.

(Total: 25 marks)

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QUESTION 4

Strong Builders Bhd (Strong Builders) is an established property developer in Malacca currently in the process of completing a major flagship project in Kelebang. Strong Builders has entered into a contract with Flexi Sdn. Bhd. (Flexi) as their main contractor for the project. Under the terms of the contract dated 1 April 2015 (the agreement), Strong Builders will release progressive payments to Flexi on completion of each stage of construction. The amount of progressive payments to be made is as fixed in Schedule 1 of the contract. Mr Big, the CEO of Strong Builders had executed the agreement on their behalf while Flexi was represented by Mr Smart, their general manager. Following the release of the latest progressive payment by Strong Builders on 1 June 2016 for RM2 Million to Flexi, a dispute arose between them. Flexi claims that the progressive payment which is due for latest work completed is RM3 Million and has stopped all work until full settlement is made of the amount due and has initiated a civil action against Strong Builders.

At the hearing, counsel for Flexi tenders a scanned copy of the agreement in evidence as the original had been destroyed by a termite infestation at Flexi's heritage building office. Counsel for Strong Builders objects to the admission of the scanned copy of the agreement and further alleges that the terms, as reflected in Flexi's copy of the agreement has been fraudulently altered. Counsel for Strong Builders alleges that the signature on the document does not belong to Mr. Big and is in fact a forgery.

Advise the trial judge on the following evidential issues:

a. The admissibility of the scanned copy of the agreement;

b. Strong Builders has arranged for an expert on handwriting, Mr Good to give his opinion that the signature on the document is not that of Mr Big. Mr Good has given evidence in other cases but has no formal training on the subject. Flexi has called their own handwriting expert from Singapore, Dr. Baik who has a PhD from the National University of Singapore. Dr. Baik has examined the signature and concluded that it is genuine but does not provide any reasons for his conclusion.

(Total: 25 marks)

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QUESTION 5

Gila is charged at the Malacca Sessions Court under section 376 of the Penal Code for rape. The victim Kat, is a girl aged 8. The incident is alleged to have occurred in a disused house located next to Gila's house. Jan, Gila's wife saw Kat leaving the disused house followed by Gila. Suspecting something was wrong Jan confronted Gila and questioned him on what he was doing to the girl. Gila admitted that he had "interfered" with the girl and told Jan to mind her own business or he would kill her.

Immediately after the incident Kat rushed back to her house. Upon entering her house, her mother noticed Kat's dishevelled appearance and asked her what had happened. Kat then related the rape incident to her mother. The mother immediately took Kat to the nearest police station to make a police report. Subsequent to that Kat was taken to a hospital for a medical examination during which genetic material for DNA profiling was also obtained.

The prosecution wishes to call Kat, her mother and Jan as its witnesses against Gila.

Advise the prosecution on the following:

a. the procedure to determine the competency of Kat as a witness and the safeguards available to protect her from trauma while giving evidence in court;

(8 marks)

b. the evidential value of the medical evidence and the mother's testimony to the proceedings;

(10 marks)

c. the competency and compellability of Jan as a witness against her husband.

(7 marks)

(Total: 25 marks)

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